

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ELAINE CHILDERS,
Plaintiff,

vs.

Case No. 04-1168-JTM

UNIFIED SCHOOL DISTRICT NO. 457,
Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the plaintiff's Motion to Alter and Amend the judgment. A motion to alter or amend under Fed. R. Civ. Pr. 59(e) may be granted to correct manifest errors of fact or law, or in light of newly discovered evidence. *Buell v. Security Gen'l Life Ins. Co.*, 784 F.Supp. 1533, 1535 (D. Colo. 1992), *aff'd*, 987 F.2d 1467 (10th Cir. 1993), *cert. denied*, 114 S.Ct. 308 (19xx). A motion to alter or amend is directed not at initial consideration, but reconsideration. *Buell*, 784 F.Supp. at 1535. Such reconsideration is appropriate only if the court has obviously misapprehended a party's position, the facts, or applicable law, has mistakenly decided issues not presented for determination, or the moving party produces new evidence which it could not have obtained through the exercise of due diligence. *Anderson v. United Auto Workers*, 738 F.Supp. 441, 442 (D. Kan. 1989). *Refrigeration Sales v. Mitchell-Jackson, Inc.*, 605 F.Supp. 6, 7 (N.D. Ill. 1983), *aff'd*, 770 F.2d 98 (7th Cir. 1985). A motion to reconsider is not "a second chance for the losing party to make its strongest case or to dress up arguments that previously failed." *Voelkel v. GMC*, 846 F.Supp. 1482 (D.Kan.), *aff'd*, 43 F.3d 1484 (10th Cir. 1994). The resolution of the motion is committed to the sound discretion of the court. *Hancock v. City of Oklahoma City*, 857 F.2d 1394, 1395 (10th Cir. 1988).

Plaintiff's motion fails to meet the standard. None of the arguments now presented is premised on newly discovered evidence; they have simply been refashioned for the sake of another chance at defeating defendant's motion. No valid justification has been offered for failing to present such arguments or authorities previously. Moreover, the cases cited by plaintiff are distinguishable precedents from outside the Tenth Circuit. Plaintiff makes no attempt to account for the various authorities cited by the court and by the defendant. The court's order of June 30, 2005 was correct and will not be modified.

IT IS ACCORDINGLY ORDERED this 30th day of August, 2005 that the plaintiff's Motion to Alter Judgment (Dkt. No. 28) is hereby denied.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE